ally supported on the ground that a stipulation which ousts the courts of jurisdiction is against public policy. *Shipping Co.* v. *Lehman, supra; Mutual Reserve Fund L. Assn.* v. *Cleveland Woolen Mills,* 82 Fed. 508. This latter doctrine has been supported loyally. *Insurance Co.* v. *Morse,* 20 Wall. 445; *Jefferson Fire Insur. Co.* v. *Bierce & Sage, Inc.,* 183 Fed. 588; *Meacham* v. *Jamestown, F. & C. R. R. Co.,* 211 N. Y. 346. But its soundness is open to attack. *U. S. Asphalt R. Co.* v. *Trinidad Lake P. Co., 222* Fed. 1006. In a few instances, where the convenience of the parties made particularly reasonable the stipulation that action should be brought only in a certain place, the courts have recognized the circumstances as exceptional and have held the stipulation to be valid. *Mittenthal* v. *Mascagni,* 183 Mass. 19; *Daley* v. *People's Building, etc., Assn.,* 178 Mass. 13. The English courts have frequently enforced such stipulations, refusing to take jurisdiction of a case where the parties had agreed to sue only in a foreign court. *Gienar* v. *Meyer,* 2 H. Bl. 603; *Johnson* v. *Machielsen,* 3 Campb. 44; *Kirchner* v. *Gruban,* [1909] 1 Ch. 413. Accord: *Dulmage* v. *White,* 4 Ont. L. Rep. 121. A few cases in America have held that a stipulation like that of the principal case entitled the party defendant to have the cause removed to the place agreed upon. *Texas Moline Plow Co.* v. *Biggerstaff* (Tex. Civ. App.), 185 S. W. 341; *Merchants' Reciprocal Underwriters* v. *First Natl. Bank* (Texas Civ. App.), 192 S. W. 1098. See also *State* v. *Superior Court,* 61 Wash. 681. In view of the customary liberality of the law regarding the right to contract, it is doubtful whether public policy requires that such stipulations be held invalid.

EVIDENCE—ADMISSIBILITY OF DYING DECLARATION.—In the trial on indictment for murder, the court admitted as a dying declaration, over the objection of the defendant, a statement written by the deceased. The only statement made by the deceased prior to the execution of the writing, indicating that he was in fear of impending death, is found in these words: "If I am going to die, I want to see my minister." Subsequently to making the statement admitted as a dying declaration, he wrote a note to his friends stating that he was feeling fine and hoped to be with them soon. *Held,* the admission of the declaration was error. *State* v. *Brooks,* 186 N. W. 46 (1922, Iowa).

The court in the principal case held that it is for the court to determine the competency of the statement claimed to be a dying declaration and its credibility upon admission is for the jury. That the judge is to pass on the preliminary conditions necessary to the admissibility of the evidence is generally accepted. It follows that, since a consciousness of impending death is essential to its admissibility, the judge must determine whether that condition exists before the declaration is admitted. 2 WIGMORE ON EVIDENCE, 1451. And in most of the states it is held that the decision of the court or judge on this subject is final and conclusive and that with it the jury has nothing more to do. *Tarver* v. *State,* 137 Ala. 29; *Fogg* v. *State,* 81 Ark. 417; *Brennan* v. *People,* 37 Colo. 256; *Williams* v. *State,* 168 Ind. 87; *State*

v. *Monich,* 74 N. J. L. 522. In Georgia and Massachusetts, however, an entirely different rule prevails, and it has been there held that while the question is primarily one for the court, yet, after the evidence has been admitted, it is not only the right but the duty of the jury to find whether a proper foundation has been laid. *Com.* v. *Brewer,* 164 Mass. 577; *Anderson* v. *State,* 117 Ga. 255; also see note 16, L. R. A. (n. s.) 660. California, Iowa and Oregon seem to have followed this rule also. *People* v. *Thomson,* 145 Cal. 717; *State* v. *Phillips,* 118 Ia. 660; *State of Oregon* v. *Doris,* 94 Pac. 44. Thus the court in the principal case follows the general rule as to this question of admissibility and consequently reverses the prior Iowa decisions following the Massachusetts and Georgia rule. It is to be noted, however, that the court cites no authority to support its decision and makes no reference whatever to the prior Iowa decisions.

EVIDENCE—INSANITY—BURDEN OF PROOF.—On a trial for murder the defense was insanity. A confession of the accused was admitted in evidence over the objection that it was not freely and voluntarily made. *Held,* the burden of proof is on the defendant pleading insanity to prove his legal incapacity to commit the crime and consequently his legal incapacity to confess the crime. *Hinson* v. *State* (Ga., 1922), 109 S. E. 661.

The opinion contains no discussion on principle. All authorities agree that the prosecution can rest upon a presumption of sanity until evidence to the contrary is introduced. There is, however, considerable conflict as to where the burden of proof lies. One view is that insanity is a question of responsibility and while the burden of going forward with the evidence is upon the defendant, the prosecution is, nevertheless, not relieved from proving all the essential elements of the offense, one of which is sanity. *People* v. *Garbutt,* 17 Mich. 9. The rule of the principal case, and what is perhaps the rule in the majority of the jurisdictions, regards insanity as an affirmative defense and the burden of proving it is upon the defendant. See note to *State* v. *Scott,* 36 L. R. A. 721, 726. But it does not follow, as the court would seem to indicate, that because the burden is upon the defendant to prove insanity as a defense it is likewise incumbent upon him to prove a legal incapacity to confess the crime. The general rule is that a confession of guilt is admissible against the accused only when freely and voluntarily made. The ordinary presumption is said to be that it was so made. *Campbell* v. *State,* 63 Tex. Cr. 595; *contra, Godau* v. *State,* 179 Ala. 27. When it appears *prima facie* that the confession was voluntary, the burden of going forward with the evidence upon this issue of voluntariness is upon the defendant. *Sims* v. *State,* 59 Fla. 38. The rule fixing the burden of proof is in dispute. I WIGMORE ON EVIDENCE, § 860. The rule in England and most American jurisdictions is that the burden is upon the prosecution to show the confession to have been voluntary. *The King* v. *Voisin,* [1918] 1 K. B. 531; *Lindsay* v. *State,* 50 L. R. A. (n. s.) 1077, 1081. The rule in Georgia is *contra* and places on the defendant the burden of proving that a confession made by him is not free and voluntary. *Eberhart* v. *State,* 47